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BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE  
Ingham County, Michigan - Thursday, July 18, 2013

APPEARANCES:

For Plaintiffs Retirement Systems:  
RONALD A. KING (P45088)  
MICHAEL J. PATTWELL (P72419)  
CLARK HILL PLC  
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Lansing, MI 48906

For Plaintiffs Webster, et al.:  
JOHN R. CANZANO (P30417)  
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For Plaintiffs Flowers, et al.:  
WILLIAM A. WERTHEIMER (P26275)  
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For the Defendants: THOMAS QUASARANO (P27982)  
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REPORTED BY: Melinda I. Dexter, RMR, RPR, CSR-4629  
Official Court Reporter  
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WITNESSES:

None

EXHIBITS:

None

1 Ingham County, Michigan  
 2 Thursday, July 18, 2013 - At 4:15 p.m.  
 3 MR. KING: Good afternoon.  
 4 THE COURT: Good afternoon. We have everybody  
 5 here?  
 6 MR. KING: They are.  
 7 THE COURT: All right. This is Docket  
 8 13-768-CZ, the General Retirement System of the City of  
 9 Detroit and the Police and Fire Retirement System of the  
 10 City of Detroit versus Kevin D. Orr, in his official  
 11 capacity as the Emergency Manager of the City of Detroit,  
 12 and Richard Snyder, in his official capacity as the  
 13 Governor of the State of Michigan.  
 14 Counsel, your appearances for the record.  
 15 MR. KING: Good afternoon, your Honor. Ron  
 16 King with Clark Hill on behalf of the Plaintiffs, the  
 17 General Retirement System of the City of Detroit and the  
 18 Police and Fire Retirement System of the City of Detroit.  
 19 THE COURT: Welcome.  
 20 MR. KING: Thank you.  
 21 MR. QUASARANO: Your Honor, if I may, Thomas  
 22 Quasarano, Assistant Attorney General, that will be  
 23 appearing in this case on behalf of the Defendant. I  
 24 believe the Defendant was served yesterday. We have not  
 25 received a request for representation, but I'm very

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1 likely going to be asked to represent the Governor.  
 2 THE COURT: Sir?  
 3 MR. WERTHEIMER: Excuse me, your Honor,  
 4 William Wertheimer. I apologize for my dress.  
 5 THE COURT: No problem. I know it's last  
 6 minute. I don't care how people are dressed. It's more  
 7 important that you are here.  
 8 MR. WERTHEIMER: Thank you, your Honor. I was  
 9 here to file my reply brief today for the Monday hearing.  
 10 I am now here knowing that this motion has been filed,  
 11 and I wanted to enter my appearance.  
 12 THE COURT: All right. You may have a seat.  
 13 There is plenty of room for all.  
 14 MR. WERTHEIMER: Thank you.  
 15 MR. CANZANO: Your Honor, excuse me, John  
 16 Canzano, Plaintiffs' attorney in the Webster case. Same  
 17 as Mr. Wertheimer, we just found out about this. I'm  
 18 here. My reply brief is being filed. I have a judge's  
 19 copy here somewhere.  
 20 THE COURT: All right. Have a seat.  
 21 MR. KING: Your Honor --  
 22 THE COURT: Anybody else?  
 23 MR. PATTWELL: Your Honor, Michael Pattwell  
 24 from Clark Hill on behalf of Plaintiffs.  
 25 THE COURT: Thank you.

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1 Counsel?  
 2 MR. KING: Your Honor, Ron King again on behalf  
 3 of the Plaintiffs, the Detroit Retirement Systems. We  
 4 might need to beg the Court's indulgence. While we  
 5 appreciate that you have seen us on very short notice,  
 6 we've been advised that the City has filed, and we're  
 7 pulling it up on the electronic filing system, so we  
 8 might need a few minutes here to figure out our very next  
 9 step.  
 10 THE COURT: Okay.  
 11 MR. KING: Because the effect of a bankruptcy  
 12 filing, if, in fact, that's -- we're trying to conform  
 13 that. We think, in fact, it has been filed here within  
 14 the last half hour. So we probably need about a  
 15 ten-minute recess here, if the Court would indulge us. I  
 16 know you have another matter.  
 17 THE COURT: Do we want to make a phone call?  
 18 MR. KING: Yeah. We can, but we're pretty --  
 19 THE COURT: Well, here's the thing: If they  
 20 haven't filed, we need to hurry up and proceed. If they  
 21 have filed --  
 22 MR. KING: We're pretty confident that they  
 23 filed.  
 24 Right?  
 25 I mean, we're pulling it up. Yeah. It's been

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1 confirmed. So I'm not sure where that leaves us with  
 2 this proceeding because it's going to be pretty hard to  
 3 undue. It's been done.  
 4 MR. WERTHEIMER: There is no automatic stay in  
 5 this.  
 6 MR. KING: Yeah. What we're here for -- the  
 7 really --  
 8 What counsel is saying is there is no automatic  
 9 stay with respect to this proceeding. So in our  
 10 judgment, this matter will proceed. What you have before  
 11 you, however, is a motion for temporary restraining order  
 12 to enjoin certain conduct that's already occurred. So  
 13 I'm not sure that we really have a lot of business in  
 14 front of the Court at this moment, but I would like to  
 15 just confer for about ten minutes on that issue because  
 16 we will proceed in the case. And if we're here and you  
 17 want to take the time to set some sort of expedited  
 18 briefing schedule, we could do that also.  
 19 It's quite likely that you, your Honor, will be  
 20 able to make a ruling on the merits of this case in  
 21 advance of whatever occurs in the context of a Chapter 9  
 22 filing.  
 23 THE COURT: I plan on making a ruling on  
 24 Monday. I could make a ruling tomorrow, if push came to  
 25 shove, but Monday would probably be soon enough. I am

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1 confident that the bankruptcy court won't act as quickly  
2 as I will.

3 MR. KING: Yeah. I'm not sure, but we'll see.  
4 I mean, there might -- but, nevertheless, so we should --

5 If you're prepared to rule on the merits on  
6 Monday, again I'm not sure what -- if there is much  
7 business for us left to do before the Court today.

8 THE COURT: Unless some kind of -- I don't  
9 really have any authority over them, so.

10 MR. KING: Right.

11 THE COURT: I don't think anything --  
12 Counsel?

13 MR. WERTHEIMER: Your Honor, the motion that's  
14 up for Monday, our motion at least that's up for Monday,  
15 is a request for a preliminary injunction to enjoin the  
16 Governor. We have no evidence the Governor has  
17 authorized any bankruptcy, and we would not only want to  
18 go forward on Monday but ask that the motion for  
19 preliminary injunction be moved up to now, hopefully, to  
20 tomorrow morning if the Court will not hear it now. But  
21 I don't think there is any reason why the Court cannot  
22 hear our motion for preliminary injunction.

23 I'm not talking about in terms of the Court's  
24 preparedness but in terms of the apparent filing. They  
25 may have filed. But nobody -- I asked the Governor's

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1 we should find out from the Office of the Attorney  
2 General whether the Governor has authorized a bankruptcy  
3 that has done the act that we were attempting to enjoin  
4 and that they knew we were attempting to enjoin and that  
5 they've known for the last two weeks and that they're  
6 filing briefs on saying that it's not ripe. The  
7 attorneys for the Government have represented to this  
8 Court that our motion is not ripe.

9 THE COURT: I just received a note from my law  
10 clerk that says the bankruptcy was filed at 4:06.

11 MR. KING: Right. Your Honor, so what we'd  
12 like to do here is amend our emergency motion for  
13 temporary restraining order and get it and request from  
14 this Court an order enjoining the Governor and the  
15 Emergency Manager from taking any further action in the  
16 bankruptcy proceeding, and we'll modify our order to that  
17 effect.

18 MR. WERTHEIMER: I would join that as to the  
19 Governor. We have not sued the Detroit Emergency  
20 Manager, but I would orally join in that motion as to the  
21 Governor and the Secretary of the Treasury.

22 MR. CANZANO: I would say the same in our case.  
23 We're not joining their motion but we're making a motion  
24 in our case that would be the same as theirs only against  
25 the Governor.

10

1 Office before we came in here -- er, the Attorney General  
2 whether they could make any representations to me that  
3 would obviate the need for me going forward, and they  
4 could not.

5 So we've got a written, fully briefed request/  
6 motion for preliminary injunction. The Attorney  
7 General's Office has briefed it. Time is obviously of  
8 the essence. I would suggest that the Court hear our  
9 motion to preliminarily enjoin the Governor authorizing a  
10 bankruptcy now.

11 MR. CANZANO: Your Honor, I would make  
12 essentially the same request except that our motion,  
13 although it seeks preliminary injunctive relief in the  
14 alternative, it primarily seeks a final declaratory  
15 judgment that what has just happened, apparently, is  
16 unconstitutional, and that is ready for a final decision  
17 we were saying on Monday. We have a reply brief that has  
18 just been filed, and we would -- we could -- this Court  
19 could issue that order immediately, and I don't know what  
20 the consequences for the bankruptcy court would be,  
21 necessarily, but I think it would -- it might make a  
22 difference.

23 MR. WERTHEIMER: I'm sorry, and I think that at  
24 a minimum, your Honor, I think we should -- I think the  
25 Court should decide the preliminary injunction now, but

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1 THE COURT: Granted, as to all of your  
2 requests.

3 How soon are you going to present me with an  
4 order?

5 MR. KING: Right now.

6 THE COURT: All right.

7 MR. KING: We just need to mark up the order  
8 that we have for the Court.

9 THE COURT: Absolutely.

10 MR. QUASARANO: Your Honor, if I may, we would  
11 ask that the Court stays enforcement of the order, and  
12 your ruling on that would be appreciated at this time.

13 THE COURT: Denied.

14 MR. QUASARANO: Thank you. We'll present an  
15 order as soon as possible.

16 THE COURT: Thank you.

17 MR. QUASARANO: Thank you, Judge.

18 MR. WERTHEIMER: Your Honor, we will need a few  
19 minutes to prepare a written order, but if we can --

20 THE COURT: Well, sir, would you like to copy  
21 that and modify what they're doing? My law clerk will be  
22 happy to help you.

23 MR. WERTHEIMER: Thank you, your Honor.

24 THE COURT: As to your stay, you'll be getting  
25 that to me in --

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1 MR. QUASARANO: Maybe I can just make a call  
2 and get an order over to you right yet today.  
3 THE COURT: Sure. You can even handwrite it.  
4 I don't care how we do it. You can run it over here, fax  
5 it over here; whatever gets you the job done. Time is of  
6 the essence.  
7 MR. QUASARANO: I appreciate that.  
8 MR. KING: (Approaching the bench.)  
9 Your Honor, Ron King again on behalf of the  
10 Plaintiffs. If we could go back on the record.  
11 THE COURT: Excuse me.  
12 MR. KING: We'd like to set the sequence of  
13 events in terms of how things have transpired in the last  
14 hour, if you will. Just for the record, our motion for  
15 emergency temporary restraining order was filed at  
16 3:37 p.m.; that is, today, July 18th. We promptly, well  
17 in advance of 4 o'clock and probably within -- well,  
18 actually, we had delivered prior to the filing time at  
19 3:37 Judge's copies to chambers for your review.  
20 Then we waited for the Attorney General, who  
21 doesn't feel compelled to make an appearance here in this  
22 case because he hasn't actually been officially retained  
23 yet, but, nevertheless, as a courtesy we waited for him  
24 to appear, which he came upstairs sometime around 4:10.  
25 We understand the bankruptcy filing was at 4:05?

12

1 THE COURT: 4:06.  
2 MR. KING: 4:06. The Court took the bench at  
3 approximately 4:20. And to the extent your Honor has had  
4 an opportunity to read the papers and was inclined to  
5 make a ruling, if you'd be willing to put that on the  
6 record, then in the -- when we do seek dismissal of the  
7 bankruptcy proceeding, we'll have some clear record of  
8 the sequence of events here.  
9 MR. WERTHEIMER: Just to add, in terms of the  
10 sequence of events, I did advise by telephone  
11 Mr. Quasarano of the fact that I would be in court and  
12 that it was my understanding that Clark Hill was going to  
13 be in court seeking a temporary restraining order. I  
14 talked to him by phone before 4 this afternoon, sometime  
15 between 3:30 and 4.  
16 MR. QUASARANO: And I could confirm that  
17 Mr. Wertheimer gave me the professional courtesy of  
18 letting me know that there was a hearing being planned.  
19 I had no -- we have no personal knowledge in our division  
20 of a bankruptcy being filed any certain time or date, so  
21 there is nothing we could provide in terms of a response  
22 that there is going to be a bankruptcy filed. So we  
23 learned it as everyone else learned.  
24 THE COURT: All right. And obviously I heard  
25 this was happening. I had another hearing that was

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1 supposed to take place at 4 o'clock, and I understood  
2 this was a very important issue, and we obviously have a  
3 hearing scheduled, another hearing scheduled, at  
4 9 o'clock on Monday.  
5 So I advised my law clerk that we had a  
6 4 o'clock hearing that wasn't going to take very long,  
7 and whenever you all got here and that we would wait for  
8 all of the attorneys, we would then have a hearing and to  
9 let me know when everybody was in place and then I would  
10 come out.  
11 So that's exactly what happened. She let me  
12 know everybody was here, gave me the paperwork to look  
13 over, and, of course, I did just that. And we got out of  
14 here as quickly as we could, obviously not in time  
15 because 4:06 occurred and they did what they were going  
16 to do, which I know you all raised here.  
17 I did have an opportunity to -- with review of  
18 what was filed, and you're asking me what I would have  
19 done, and it was my intention, after reviewing what you  
20 had filed, in addition to other research that my capable  
21 externs from Cooley and from Michigan State, as well as  
22 my very capable law clerk pulled for me, I reviewed  
23 constitutional provisions, I reviewed legislative intent,  
24 I reviewed what you all provided me, I reviewed a lot of  
25 information in the last few hours, and it was my

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1 Intention to grant you your request completely.  
2 MR. KING: Thank you, your Honor. Appreciate  
3 your clarifying the record.  
4 MR. WERTHEIMER: Thank you, your Honor.  
5 Your Honor, we have a proposed order.  
6 THE COURT: You may approach. Thank you.  
7 MR. WERTHEIMER: Thank you. It is handwritten.  
8 (Approaching the bench.)  
9 THE COURT: No problem.  
10 MR. WERTHEIMER: And for caption, it just says,  
11 at this point, Flowers Caption.  
12 THE COURT: Okay.  
13 MR. WERTHEIMER: I had some help in drafting  
14 too if you can't read the --  
15 THE COURT: We'll make it work.  
16 MR. WERTHEIMER: Okay. Thank you, Judge.  
17 MR. KING: We may be back tomorrow, your Honor.  
18 MR. WERTHEIMER: We may be back too,  
19 your Honor. And if we are, I will be in a suit.  
20 THE COURT: It's okay. As long as your body is  
21 covered, I don't care what's it's covered with.  
22 MR. KING: I think with respect to the present  
23 motion before you, we have an order in place and  
24 appreciate you making the accommodation and time for us  
25 today. Thank you.

15

1 THE COURT: No problem.  
2 Now, if you're back tomorrow, what is it going  
3 to be for?  
4 MR. KING: We might file a mandamus action  
5 requiring the EM to withdraw the Chapter 9 filing.  
6 THE COURT: Will this require time on the  
7 record?  
8 MR. KING: Yes.  
9 THE COURT: Okay. My time restriction is that  
10 I have my morning free until about 1:30. Can you get it  
11 here before 1:30?  
12 MR. PATTWELL: Yes.  
13 MR. KING: Absolutely.  
14 THE COURT: I'll make myself available all  
15 morning until 1:30.  
16 MR. KING: Thank you, your Honor.  
17 THE COURT: Okay.  
18 MR. CANZANO: May I approach, your Honor? I  
19 have an order drafted also.  
20 THE COURT: You may.  
21 MR. CANZANO: (Approaching the bench.)  
22 THE COURT: Okay. We'll make you copies, and  
23 this is our copy.  
24 Anything else for the record?  
25 MR. KING: No, your Honor. Thank you.

16

1 MR. WERTHEIMER: No, your Honor. Thank you.  
2 THE COURT: That's all for the record. Thank  
3 you.  
4 (At 4:38 p.m., the matter is  
5 concluded.)  
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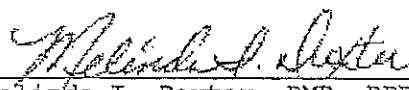
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1 STATE OF MICHIGAN)  
2 ) SS.  
3 COUNTY OF INGHAM)  
4

5  
6 CERTIFICATE OF REPORTER

7 I, Melinda I. Dexter, Certified Shorthand  
8 Reporter, do hereby certify that the foregoing  
9 17 pages comprise an accurate, true, and complete  
10 transcript of the proceedings and testimony taken in the  
11 case of The General Retirement System of the City of  
12 Detroit, et al., versus Kevyn D. Orr, et al., Case  
13 No. 13-768-CZ, and Gracie Webster, et al., versus the  
14 State of Michigan, et al., Case No. 13-734-CZ, and  
15 Robbie Flowers, et al., versus Rick Snyder, et al., Case  
16 No. 13-729-CZ, on Thursday, July 18, 2013.

17 I further certify that this transcript of the  
18 record of the proceedings and testimony truly and  
19 correctly reflects the exhibits, if any, offered by the  
20 respective parties. WITNESS my hand this the eighteenth  
21 day of July, 2013.

22   
23 Melinda I. Dexter, RMR, RPR, CSR-4629  
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